

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(6921 Beech Avenue)		
14 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
All Phases Reconstruction	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2019-0537-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by All Phases Reconstruction, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 1B02.3.C of the Baltimore County Zoning Regulations (“BCZR”) and § 1B02.3.C.2. of the Zoning Commissioner’s Policy Manual to permit a proposed replacement dwelling with a side setback of 4 ft. in lieu of the required 25 ft. A site plan was marked as Petitioner’s Exhibit 1.

Antonio Robinson appeared in support of the petition. Corey Scott appeared on behalf of the Overlea Community Association. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any of the County reviewing agencies.

The site is approximately 10,440 square ft. in size and is zoned DR 5.5, with a 25 ft. side setback. The structure being replaced was originally approved as non-conforming, having a setback on Willow Avenue of 6 ft. It was destroyed by fire. The Petitioner, replacing that structure, requests an additional 2 ft. reduction, by variance, of that setback.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Testimony and evidence presented revealed that the subject property is a corner lot. Beech Avenue is the front of the property and is shared with other houses in the area. However, the subject property, unlike its neighbors, also faces Willow Avenue. This physical difference relative to the neighboring structures renders it unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed replacement dwelling. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County opposition.

THEREFORE, IT IS ORDERED, this 30th day of **June, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to § 1B02.3.C of the Baltimore County Zoning Regulations (“BCZR”) and § 1B02.3.C.2. of the Zoning Commissioner’s Policy Manual, to permit a proposed replacement dwelling with a side setback of 4 ft. in lieu of the required 25 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
LAWRENCE M. STAHL
Administrative Law Judge for
Baltimore County

LMS/dlw